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Criminal Procedure

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Criminal Procedure

Criminal Procedure; 72-hour treatment facilities

Penal Code §647 (amended); Welfare and Institutions Code §§5170.3, 5170.5, 5170.7, 5172.1, 5177 (new); 5170, 5171, 5174 (amended); 19855 (repealed).

SB 819 (Deukmejian); STATS 1971, Ch 1581

Specifies detention procedures for intoxicated persons at 12-hour treatment and evaluation facilities.

Section 647(f) of the Penal Code provides that it is a misdemeanor for any person found in any public place to be under the influence of intoxicating liquor, any drug, toluene, or any poison (defined in §4160, Schedule D of the Business and Professions Code) or any combination thereof, if the person is unable to exercise care for his own safety or the safety of others.

Chapter 1581 adds subdivision (ff) to §647 to provide that when a person has violated subdivision (f) of this section, a peace officer shall cause the person to be placed in *civil protective custody*. Such person shall then be placed in a 72-hour treatment and evaluation facility pursuant to §5170 of the Welfare and Institutions Code. A person placed in civil protective custody shall not be subject to criminal prosecution or juvenile court proceeding based on such placement. However, this subdivision shall not apply to the following persons:

- (1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.
- (2) Any person who a peace officer has probable cause to believe has committed any felony or a misdemeanor.
- (3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

Section 5170 of the Welfare and Institutions Code provides for the taking into custody of dangerous or gravely disabled persons and for the placement of such person in a 72-hour facility for treatment and evaluation. Chapter 1581 amends this section to provide that such person shall be taken into *civil protective custody*.

Section 5170.3 is added to the Welfare and Institutions Code to provide that the evaluation facility shall require a written statement designating the circumstances under which the person's condition was called to the officer, or other designated person's attention. Such writing shall also state that the officer, or other designated person, believes that as a result of inebriation, the person is a danger to himself or others, or that he is gravely disabled, or has violated subdivision (f) of §647 of the Penal Code.

Section 5170.5 is added to the Welfare and Institutions Code to allow any person placed in a 72-hour facility the right to make at least two phone calls in the presence of a public officer or employee, at his own expense, within three hours after his confinement in such facility.

Section 5170.7 is added to the Welfare and Institutions Code to provide that a person who requests to be released from such facility before 72-hours, shall be released if the professional person in charge of the facility determines that the person is not a danger to others, or to himself.

Chapter 1581 amends §5171 of the Welfare and Institutions Code to provide that weekends and holidays shall be included for the purpose of calculating the 72-hour period. Section 5171 is further amended to provide that a person may voluntarily remain in such facility for longer than 72-hours if he is in need of further treatment, provided that persons taken or caused to be taken to the facility shall have priority over the person who has voluntarily remained in the facility for more than 72-hours.

Section 5172.1 is added to the Welfare and Institutions Code to allow a person who is a danger to others, or to himself, or gravely disabled as a result of inebriation to voluntarily apply for admission to a 72-hour evaluation and detoxification treatment facility for inebriates.

Chapter 1581 amends §5174 of the Welfare and Institutions Code which pertains to the funding of such 72-hour treatment and evaluation facilities.

Section 5177 is added to the Welfare and Institutions Code to provide that if a person is placed in a 72-hour facility pursuant to §5170 of the Welfare and Institutions Code or §647(ff) of the Penal Code, the peace officer shall report such admission to the Bureau of Criminal Identification and Investigation. The Bureau shall record the admission on the person's cumulative record. The disposition report and the person's record shall describe the event as a custodial placement for intoxication.

Section 19885 of the Welfare and Institutions Code which provided for probation of persons convicted of disorderly conduct pursuant to §647(f) of the Penal Code is repealed.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Crimes Against Public Peace and Welfare* §618 (1963), (Supp. 1969); *Introduction* §30A (Supp. 1969).
- 2) REVIEW OF SELECTED 1969 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 233.

Criminal Procedure; statute of limitations

Penal Code §800 (amended).

SB 1028 (Carpenter); STATS 1971, Ch 954

Section 800 of the Penal Code is amended to provide that an indictment for voluntary or involuntary manslaughter shall be found, an information filed, or case certified to the superior court within three years after *discovery* of the crime.

Under the provisions of Chapter 954, voluntary and involuntary manslaughter are now included within the exceptions to the requirement of §800 that an indictment for any felony shall be found, an information filed, or case certified to the superior court within three years after the *commission* of the crime.

See Generally:

- 1) 1 WITKIN, CALIFORNIA CRIMES, *Defenses* §235 (1963); §236 (Supp. 1969).
- 2) CONTINUING EDUCATION OF THE BAR, *California Criminal Law Practice* § 23.45 (1969).
- 3) REVIEW OF SELECTED 1969 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 165.
- 4) 2 Pac. L.J., REVIEW OF SELECTED 1970 CODE LEGISLATION 362 (1971).

Criminal Procedure; warrants

Penal Code §850 (amended).

AB 347 (Campbell); STATS 1971, Ch 194

Penal Code §850 provides that a telegraphic copy of a warrant or an abstract of a warrant for an arrest may be sent by telegraph, teletype, or any other electronic devices, to one or more peace officers, and such copy or abstract is effectual in the hands of any officer, and he shall proceed in the same manner under it, as though he held the original warrant issued by a magistrate or the issuing authority or agency.

An abstract of the warrant shall contain the following information:

- (a) The warrant number.
- (b) The charge.

- (c) The court or agency of issuance.
- (d) The subject's name, address and description.
- (e) The bail.
- (f) The name of the issuing magistrate or authority.
- (g) Whether the warrant has been certified for night service if the offense charged is a misdemeanor.

Prior to the amendment, an abstract of the warrant was required to state whether the offense charged is a felony or a misdemeanor. AB 347 deletes this requirement.

See Generally:

- 1) 43 OPS. ATT'Y GEN. 286 (1964).
- 2) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Proceedings Before Trial* §99 (Supp. 1969).
- 3) REVIEW OF SELECTED 1967 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 186.

Criminal Procedure; grand juries

Penal Code §§890, 904.5 (amended).
AB 1588 (Schabarum); STATS 1971, Ch 1540

Section 904.5 of the Penal Code is amended to provide that in counties having a population of 6,000,000 or more, the presiding judge of the superior court may, upon a showing of good cause, order the impanelment of one additional grand jury.

Section 904.5 is further amended to provide that such additional grand jury shall have exclusive jurisdiction to inquire into public offenses. However, the original grand jury shall retain jurisdiction over those public offenses where inquiry has been initiated before the impanelment of an additional grand jury. Upon discharge of the additional grand jury, the original grand jury shall regain original jurisdiction to inquire into public offenses and complete all other grand jury responsibilities.

Prior to the enactment of Chapter 1540, §904.5 did not require a showing of "good cause" before an additional grand jury could be empaneled; neither could such a grand jury inquire into public offenses.

Chapter 1540 deletes the provision in §904.5 that in no event shall more than two grand juries be impaneled in any one year.

Section 890 of the Penal Code is amended to provide that the fee for grand jurors shall be ten dollars per day plus mileage, rather than five dollars per day as previously provided for.

Criminal Procedure; grand jury selection

Penal Code §§900, 902, 904 (amended).

AB 898 (Braithwaite); STATS 1971, Ch 860

Revises method of making up the "grand jury box" and selection of persons to serve on the grand jury. Allows counties having a population in excess of 4 million to empanel up to 40 rather than 34 grand jurors.

Penal Code §900 as amended, now provides that the county clerk, upon receiving the list of persons selected by the court, shall do either of the following:

- 1) Write down the names of the persons selected, conceal them and place them in the grand jury box, or
- 2) Assign a number to each name selected and place the number in the grand jury box.

Section 902 of the Penal Code is amended to provide that the names of persons drawn for grand juries shall be drawn from the grand jury box by withdrawing either names or numbers from the box pursuant to §900 of the Penal Code.

Section 904 of the Penal Code is amended to provide that counties having a population in excess of four million may empanel up to 40, rather than 34 grand jurors, as previously provided.

Prior to the enactment of Chapter 860 Sections 900, 902, and 904 did not allow the clerk to assign each name a number and to place such numbers in the "grand jury box" for selection of grand jury members.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Introduction* §10 (1963).

Criminal Procedure; issuance of subpoenas

Penal Code §§939.2, 1326, 1327 (amended).

AB 963 (MacDonald); STATS 1971, Ch 1196

Penal Code §939.2 designates those persons who may issue and sign a subpoena requiring the attendance of a witness before the grand jury. As amended, this section now includes the district attorney's investigator among those persons authorized to sign and issue such a subpoena.

Penal Code §1326 provides that the process by which the attendance of a witness before a court or magistrate is required is a subpoena; and

authorizes persons to sign and issue the subpoena. This section is amended to include the district attorney's investigator, the public defender, and the public defender's investigator as persons authorized to sign and issue subpoenas for such witnesses.

Section 1327 of the Penal Code provides for the form of a subpoena. By amendment, this form must now contain a place for the signature of the district attorney's investigator, the public defender and the public defender's investigator.

Under prior law, subpoenas to appear in a criminal case could be issued only by a judge or the district attorney, and in some cases by a court clerk.

See Generally:

- 1) WITKIN, *CRIMINAL PROCEDURE, Proceedings Before Trial* §174 (1963); *Trial* §349 (1963).

Criminal Procedure; separation of jurors in criminal cases

Section 6 of Chapter 520, STATS 1969 (repealed).

AB 394 (Beverly); STATS 1971, Ch 121

Chapter 520 of *Stats* 1969 amended Penal Code §§1121, 1122, 1128, 1135, 1137 to allow jurors to separate before, as well as after, a case had been submitted to them. [See generally: REVIEW OF SELECTED 1969 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 171-172; PENAL CODE §§1121 (Custody or separation of jury; oath of officer having custody), 1122 (Admonition of jury at each adjournment), 1128 (Authority of jury to decide in court or retire for deliberation; custody during deliberation; communications and separate room for women jurors on retirement for night), 1135 (Jury rooms and equipment; duty of supervisor to provide; court order for provision; expense; separate rooms for male and female jurors) and 1137 (Papers and evidence which the jury may take with them)].

Section 6 of Chapter 520, Stats 1969 provided that the amendments made by this act shall remain in effect until December 31, 1971, and shall have no force or effect after that date. Chapter 121 repeals subsection 6 of Chapter 520, Stats 1969, thus extending the provisions of Chapter 520, Stats 1969 indefinitely.

See Generally:

- 1) WITKIN, *CALIFORNIA CRIMINAL PROCEDURE, Judgment and Attack in Trial Court* §§517, 518, 521, 522, 523 (1963).

Criminal Procedure; grand jury transcripts

Penal Code §938.1 (amended).

AB 1416 (Warren); STATS 1971, Ch 1533

Section 938.1 of the Penal Code is amended to provide that the county clerk shall file the original grand jury transcript and deliver copies as required by this section, rather than deliver the original transcript to the district attorney as previously required.

The transcript shall not be open to the public until 10 days after its delivery to the defendant or his attorney. Thereafter, the transcript shall be open to the public, *unless* the court orders otherwise on its own motion or on motion of a party pending a determination as to whether all or any part of the transcript should be sealed. If the court determines that there is a reasonable likelihood that making public all or any part of the transcript may prejudice a defendant's right to a fair and impartial trial, that part of the transcript shall be sealed until the the defendant's trial has been completed.

Prior to the enactment of AB 1416, the clerk could not reveal the contents of the grand jury transcript until after the defendant had been taken into custody. Now, the transcript can not be revealed until 10 days after delivery of it to the defendant or his attorney unless the court determines all or any part of it shall not be revealed.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Proceedings Before Trial* §§172, 178 (1963); *Trial* §329D (Supp. 1969).
- 2) 7 SAN DIEGO L. REV. 8 (1970).
- 3) Cramer v. Superior Court, 265 Cal. App. 2d 216 (1968).

Criminal Procedure; assigned counsel

Penal Code §987.8 (new).

SB 10 (Collier); STATS 1971, Ch 744

Section 987.8 of the Penal Code provides that at the conclusion of any case in which the defendant was represented by the public defender or by a court appointed attorney, the court shall make a determination as to the defendant's *present ability* to pay for all or part of the services provided him. If the court finds that the defendant is financially able to pay for all or part of the services, it shall order him to pay the sum in any installments and manner which it believes reasonable and compatible with his financial ability. Execution may be issued on the order in the same manner as on a judgment in a civil action, however, the order to pay shall not be enforced by contempt.

COMMENT

Section 27707 of the Government Code, relating to services of the public defender (Sections 27700 *et seq.*), provides that the court in which an action is pending may make the final determination as to the defendant's financial ability to employ his own counsel, but this section is silent as to when the determination is to be made. Section 27707 does specify that the public defender cannot represent a defendant after a determination by the court that the defendant does not qualify for his services, except in an action appealing that determination or an unrelated proceeding.

Section 987.8 of the Penal Code therefore creates a dual procedure whereby a defendant's financial status may be scrutinized by the court pursuant to Government Code Section 27707 to determine eligibility for the public defender's services, and at the end of the trial a similar process is required to determine the defendant's present ability to pay for all or part of the costs.

This bill is apparently designed to reduce litigation by discouraging frivolous claims predicated upon an awareness that there is nothing to lose by utilizing free counsel. If the possibility of being required to pay for all or part of the cost of counsel does in fact discourage litigation, this raises a question as to whether this bill might chill the exercise of Sixth Amendment rights by one who might be in doubt about his financial status at the outset of a trial. See *In re Allen*, 71 Cal. 2d 388 (1969); *In re Ricky H.*, 2 Cal. 3d 513 (1970).

It should also be noted that in Penal Code §987.8, the court is to determine the defendant's *present* ability to pay for all or part of the cost of counsel.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Proceedings Before Trial* §§136, 137, 221 (1963), (Supp. 1969); *Trial* §362 (1963), (Supp. 1969).

Criminal Procedure; sentencing

Penal Code §§1204, 1381, 1381.5 (amended).

AB 2091 (Meade); STATS 1971, Ch 1080

Allows defense to submit to the court a study of the defendant suggesting a possible rehabilitation program. Requires speedy trial for an inmate with respect to sentencing for another criminal matter which is pending against him.

Section 1204 of the Penal Code provides that no affidavit or testimony, or representation of any kind, verbal or written, can be offered

to, or received by, the court or judge in aggravation or mitigation of the punishment except testimony of witnesses examined in open court and, in the case of a sick or infirm person, a deposition taken by a magistrate out of court.

Chapter 1080 amends §1204 to provide that this section shall not be construed to prohibit the filing of a written report relating to defendant's background and personality and suggestions for a rehabilitation program for such defendant. Section 1204, as amended, further provides that if such a report is submitted, the prosecution or probation officer shall be permitted to reply to or to evaluate the program.

Sections 1381 and 1381.5 of the Penal Code provide that if a defendant has been convicted of one offense and has other charges pending against him, he may demand a prompt hearing on those charges. [For a thorough discussion of §§1381 and 1381.5 see **CONTINUING EDUCATION OF THE BAR, *California Criminal Law Practice* §§23.38, 23.39, 23.45, 23.163 (1969)**].

Chapter 1080 extends these provisions to apply when a defendant has been convicted on another offense, but has not yet been *sentenced*. Pursuant to §§1381 and 1381.5 as amended, such a defendant may now demand prompt *sentencing* on the subsequent offense.

COMMENT

The amendments to §§1381 and 1381.5 were apparently designed to codify the decision in *People v. Brown*, 260 Cal. App. 2d 745 (1968), which held that as used in Penal Code §1381.5, "brought to trial" encompasses the entry of judgment or other final appealable order (including the imposition of sentence), as well as that portion of the criminal proceeding which results in a determination of the accused's guilt or innocence.

It can be argued that the enactment of Chapter 1080 will promote the speedy disposition of pending sentencings, and enable a defendant to take advantage of the possibility of concurrent sentences.

See Generally:

- 1) 1 WITKIN, CALIFORNIA CRIMES, *Defenses* §197 (1963).
- 2) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Trial* §314 (1963), (Supp. 1969).

Criminal Procedure; temporary release of prisoners

Penal Code §1203.1a (new).

AB 1849 (Cory); STATS 1971, Ch 1357

Chapter 1357 adds §1203.1a to the Penal Code to allow a proba-

tion officer to authorize the temporary release of any inmate of the county jail, honor farm, or other detention facility for purposes preparatory to his return to the community within 30 days prior to his release date, if the probation officer concludes that such inmate is a fit subject therefor.

The release may be made with or without custody and it applies to any such inmate who is confined or committed as a condition of probation, after suspension of imposition of sentence or suspension of execution of sentence.

The release shall not be for a period of more than 3 days and the probation officer may require the inmate to reimburse the county, in whole or in part for expenses incurred by the county in connection with the release.

Criminal Procedure; probation reports

Penal Code §1203.05 (new).

SB 1180 (Rodda); STATS 1971, Ch 869

Penal Code §1203.05 provides that after 30 days from the date judgment is pronounced or probation is granted, any report of the probation officer filed with the court may be inspected by court personnel. However, such reports shall be made available only to persons authorized or required by law to inspect or receive copies of the report, and shall not be open to public inspection.

Any other person may inspect or receive copies of the report at any time by order of the court upon filing a petition therefor. In addition, the court may, on its own motion, at any time make the report public or disclose its contents.

Any person is entitled to inspect or receive copies of a probation report that is not otherwise open to copying or inspection, if another accusatory pleading, arising out of a subsequent arrest, is filed with respect to the person who is the subject of the report. In such a case, the report shall be open to inspection or copying until such time as there is a final disposition of the case.

COMMENT

The apparent intent of the legislature in adopting this bill is to eliminate public inspection of probation reports after 30 days from the date judgment is pronounced or probation is granted, unless the court permits such inspection.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Punishment for Crimes* §1058 (1963); (Supp. 1969).
- 2) CONTINUING EDUCATION OF THE BAR, *California Criminal Law Practice*, §18.79 (1969).

Criminal Procedure; probation

Penal Code §1203.9 (amended).

AB 282 (Cory); STATS 1971, Ch 1169

Section 1203.9 of the Penal Code is amended to provide that when a person is released on probation, his case may be transferred to any court of the same rank in the county in which the person resides or has moved. The order of transfer shall contain an order committing the probationer to the care and custody of the probation officer of such county. A copy of the order shall be transmitted to the probation officer of such county. Thereafter, the court shall have entire jurisdiction over the case with like power to transfer the case.

Prior to its amendment, §1203.9 provided that the case could be transferred to a court of the same rank in any other county, *or city and county of this state*. The court was required to commit the probationer to the care and custody of the transferee county. Now such commitment may be accomplished by placing an order of commitment in the order of transfer. Prior to this amendment §1203.9 did not require that a copy of the order be transmitted to the probation officer of the transferee county.

COMMENT

The apparent reason for deleting "or city and county of this state" from §1203.9 was that in 1970, Article 11, §66 was added to the California Constitution to provide that "a charter city and county is a charter city and a charter county."

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Punishment for Crime* §§1048, 1050 (1963).

Criminal Procedure; Cobey Work Furlough Law

Penal Code §1208 (amended).

AB 1027 (Moorhead); STATS 1971, Ch 1313

Penal Code §1208, known as the Cobey Work Furlough Law, authorizes arrangements under which a prisoner may work at regular outside employment during working hours and remain in confinement at

other times. (See REVIEW OF SELECTED 1965 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 189).

Section 1208 is amended by deletion of the qualification that the work furlough administrator may authorize a prisoner to secure employment or education for himself *in the county*. Apparently this section now allows a prisoner to seek employment and education outside of the county of confinement.

Chapter 1313 adds to §1208 a provision allowing the work furlough administrator to release any prisoner, for a period not to exceed 72 hours, for medical, dental, or psychiatric care, and for family emergencies or pressing business which would result in severe hardship if the release were not granted.

Section 1208 is also amended to provide that the earnings of the prisoner in the work program *may* (rather than shall) be collected by the work furlough administrator.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Punishment for Crime* §§913, 914 (1963), (Supp. 1969).

Criminal Procedure; compensation for appointed counsel

Penal Code §1241 (amended).

AB 1417 (Warren); STATS 1971, Ch 1158

Section 1241 of the Penal Code is amended to provide that a counsel appointed to represent a party to any appeal or proceeding shall be reasonably compensated for his expenses.

Prior to the enactment of Chapter 1158, Section 1241 provided that a counsel appointed to represent a party to any appeal or proceeding in a *criminal matter* shall be reasonably compensated for his expenses.

COMMENT

The apparent purpose of this act is to allow compensation to a counsel appointed to represent a person in a juvenile, narcotic or mental health case, since such cases are not technically criminal matters and were not technically within the provisions of §1241.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Appeal*, §640 (1963); §§640, 716 (Supp. 1969).
- 2) REVIEW OF SELECTED 1965 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 191.
- 3) Luke v. County of Los Angeles, 269 Cal. App. 2d 495 (1969).

Criminal Procedure; bail

Penal Code §1269b (amended).

AB 348 (Campbell); STATS 1971, Ch 195

Penal Code §1269b provides that persons authorized to accept and approve bail, issue and sign an order for the release of a prisoner, or set the time and place for the appearance of the arrested person before the appropriate court are as follows:

(a) The officer in charge of a jail wherein an arrested person is held in custody.

(b) An officer of a sheriff's department or police department of a city who is in charge of a jail *or employed at a fixed police or sheriff's facility*, and is acting under an agreement with the agency which keeps the jail wherein an arrested person is held in custody.

(c) The clerk of the justice or municipal court of the judicial district in which the offense was alleged to have been committed.

(d) The clerk of the superior court in which the case against the defendant is pending.

Notice for the appearance of the arrested person before the appropriate court and the adopting of a schedule of bail is set forth in subdivisions (a), (b), (c) and (d) of §1269b.

Prior to this amendment, an officer of a sheriff's department or police department who is employed at a fixed police or sheriff's facility did not have the authority to approve or accept bail, sign an order releasing a prisoner or set the time and place for appearance.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Proceedings Before Trial* §125 (1963); §115 (Supp. 1969).
- 2) REVIEW OF SELECTED 1969 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 172, 213; REVIEW OF SELECTED 1965 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR, 184, 185.

Criminal Procedure; bail, surrender of defendant

Penal Code §1300 (amended).

AB 2712 (Sieroty); STATS 1971, Ch 1659

Requires reasonable effort to notify defendant's attorney upon surrender of defendant by bondsman or depositor. Requires defendant be brought before the court within 48 hours and notified of certain rights.

Section 1300(a) of the Penal Code, as amended, requires that prior

to forfeiture of bail the defendant may be surrendered in the following manner:

(1) A certified copy of the undertaking of the bail or certificate of deposit must be delivered to the officer who must detain the defendant, and by a certificate in writing, acknowledge the surrender.

(2) The bail or depositor, upon surrendering the defendant shall make reasonable effort to give notice to the defendant's last attorney of record, if any, of such surrender.

(3) The officer to whom the defendant is surrendered shall within 48 hours, bring the defendant before the court and the court shall advise him of his right to make a motion to the court for an order permitting the withdrawal of any previous waiver of time, and shall advise him of the authority of the court, as provided in subdivision (b) below of this section, to order return of the premium paid by the defendant or other person, or any part of it.

(4) Upon the undertaking, or certificate of deposit, and the certificate of the officer, the court, upon proper procedure, may order the bail or deposit exonerated.

Section 1300(b) continues to provide that notwithstanding §1300(a), the court may, in its discretion, order the bail or the depositor to return to the defendant, or other person who has paid the premium or any part of it, all of the money so paid.

Prior to this amendment, §1300 of the Penal Code did not require reasonable effort to notify the defendant's attorney upon surrender of the defendant by a bondsman or depositor. Nor was it required that defendant be brought before the court within 48 hours and be advised of the authority of the court to order the return of any part of the premium paid by him, and to permit a motion to withdraw his previous waiver of time.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Proceedings Before Trial*, §160 (1963).

Criminal Procedure; speedy sentencing of prisoners

Penal Code §§1381, 1381.5 (amended).

SB 1508 (Moscone); STATS 1971, Ch 1556

This chapter requires a speedy trial or sentencing (within 90 days unless otherwise requested by the defendant) whenever a defendant is confined in a state (§1381) or federal (§1381.5) institution and has pending any other indictment, information, complaint, or criminal proceed-

ing wherein he remains to be sentenced. Prior to this amendment, speedy sentencing was not guaranteed by statute, but the courts had held in *People v. Brown*, 260 Cal. App. 2d 745 (1969), that imposition of sentence is an essential part of the right to a speedy trial guaranteed to an accused.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Trial* §§314 (1963); 314, 314A (Supp. 1969).

Criminal Procedure; concurrent sentences

Penal Code §§1389.8 (new), 1389.7 (amended).

AB 2044 (Moorhead); STATS 1971, Ch 1185

Chapter 1185 amends §1389.7 of the Penal Code to allow the Adult Authority and the California Women's Board of Terms and Parole, when, pursuant to the agreement on detainers *or other provision of law*, an inmate has been transferred to another jurisdiction for concurrent service of a previously imposed sentence, to meet in such other jurisdiction, or enter into cooperative arrangements with corresponding agencies in the other jurisdiction, as necessary to carry out the term-fixing and parole functions.

Chapter 1185 adds §1389.8 to the Penal Code to provide that "it shall be the responsibility of the agent of the receiving state to return the prisoner to the sending state upon completion of the proceedings."

Prior to the enactment of Chapter 1185, if a prisoner was serving a California term in a *foreign* jurisdiction under some *other provision of law* other than under the agreement on detainers, the Adult Authority or Womens' Board was not authorized to enter into a term fixing agreement. Chapter 1185 allows such term fixing agreements regardless of whether the prisoner is in the other jurisdiction and is *brought* before a California court, or the prisoner is *transferred* to another jurisdiction for concurrent service of previously imposed sentences.

Criminal Procedure; criminal action against corporations

Penal Code §§1390, 1391, 1393, 1396 (amended); §§1394, 1395 (repealed).

AB 587 (Knox); STATS 1971, Ch 1591

Chapter 1591 provides that where an *accusatory pleading* is filed

against a corporation, the judge shall issue a summons requiring the corporation to answer the charge (§1390). The summons shall state the nature of the accusation, generally designating the offense; the summons shall also designate the time for appearance (§1391). At the time set for the designated appearance, the proceedings are to be the same as proceedings against a natural person (§1393).

Prior to enactment of this chapter, as to a corporation no reference was made to an accusatory pleading, but rather the summons was to be issued by the judge upon information or presentment of the grand jury. The summons was to contain the charge made by such information or presentment. The hearing on the summons was to determine whether there was sufficient evidence to believe the corporation guilty of the offense charged. If so, the magistrate was to return a certificate stating that there was sufficient evidence, at which time the grand jury or district attorney was allowed to proceed.

Pursuant to this chapter the hearing upon the summons is analogous to an arraignment.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Introduction* §17 (1963), (Supp. 1969).

Criminal Procedure; return of stolen or embezzled property

Penal Code §§1408, 1409, 1410 (amended).

AB 574 (Wood); STATS 1971, Ch 799

As amended, §§1408, 1409, 1410 of the Penal Code provide that recovered stolen or embezzled property shall be delivered to the rightful owner upon his application and a satisfactory showing of ownership. Such delivery will be made after reasonable notice and opportunity to be heard has been given to the party from whose custody the property was recovered. The property will be returned as is, without prejudice to the state, upon the owner's payment of the necessary expenses incurred in its preservation, as certified by the magistrate.

Prior to this amendment, there were no provisions in these sections of the Penal Code requiring "reasonable notice and opportunity to be heard" as conditions precedent to the return of recovered stolen or embezzled property, nor was such return made expressly "without prejudice to the state."

Criminal Procedure; pretrial review

Penal Code §1510 (new).

SB 677 (Lagomarsino); STATS 1971, Ch 944

Section 1510 is added to the Penal Code to provide that the denial of a motion made pursuant to §995 (Cases in which an indictment or information must be set aside) or §1538.5 (Motion to return property or suppress evidence) may be reviewed prior to trial only if the motion was made by the defendant in the trial court not later than:

(a) 45 days following defendant's arraignment on the complaint if a misdemeanor, or

(b) 60 days following defendant's arraignment on the information or indictment if a felony.

This section further provides that an exception will be made if, within these time limits, the defendant was unaware of the issue or had no opportunity to raise the issue.

COMMENT

The apparent purposes of Chapter 944 are to encourage prompt filing of motions made pursuant to Sections 995 and 1538.5 of the Penal Code; to limit the practice of using pretrial extraordinary writs as a means of delaying a criminal trial; and to reduce delays which arguably tend to diminish the efficiency of the judicial process.

Criminal Procedure; return of search warrants

Penal Code §§1529, 1534 (amended).

SB 349 (Lagomarsino); STATS 1971, Ch 697

This chapter amends Section 1534 of the Penal Code to permit search warrants to be returned to the issuing magistrate or his court rather than be returnable only to the issuing magistrate personally.

Section 1529, which prescribes the form in which a search warrant must be written, has been amended to comply with the amendment of Section 1534.

Criminal Procedure; asexualization of prisoners

Penal Code §2670 (repealed).

SB 1146 (Moscone); STATS 1971, Ch 778

Chapter 778 repeals Section 2670 of the Penal Code which authorized asexualization of recidivist prisoners.

Criminal Procedure; parole

Penal Code §3049.5 (new).

AB 1736 (Moorhead); STATS 1971, Ch 1700

Section 3049.5 is added to the Penal Code to provide that notwithstanding the provisions of §3049 of the Penal Code (minimum imprisonment), any prisoner selected for inclusion in a specific research program approved by the Board of Corrections may be paroled upon completion of the diagnostic study provided for in §5079. However, the number of persons released in any one year pursuant to this section shall not exceed 5 percent of the total number of prisoners released in the preceding year.

Section 3049.5 further provides that this section shall not apply to prisoners who physically attacked any person or who attempted to inflict physical harm upon a person while committing the offense for which he has been imprisoned.

Section 3049.5 requires the Board of Corrections to report to the Legislature on any research program completed or in progress pursuant to this section.

Criminal Procedure; execution of sentence: mentally disordered persons

Penal Code §§3704.5 (new); 3703, 3704 (amended).

AB 1653 (Ketchum); STATS 1971, Ch 1136

Section 3703 of the Penal Code is amended to provide that when a defendant is found to be insane after the jury verdict, he must be taken to *a medical facility of the Department of Corrections* until his reason is restored.

Section 3704 of the Penal Code is amended to provide that when a prison inmate, who has been sentenced to death, becomes insane prior to the execution of his sentence, such inmate must be taken to *a medical facility of the Department of Corrections* until he recovers his sanity.

Section 3704.5 is added by Chapter 1136 to provide that any person in a State hospital pursuant to §3703 on the effective date of this bill, must be transferred to a Department of Corrections medical facility.

Prior to the enactment of Chapter 1136, an inmate found insane prior to the execution of his sentence was required to be taken to a State hospital for the insane rather than a medical facility of the Department of Corrections.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Judgment and Attack in Trial Court* §§624, 625 (1963).

Criminal Procedure; mentally disordered prisoners

Penal Code §4011.6 (amended).

SB 800 (Petrus); STATS 1971, Ch 1117

Section 4011.6 of the Penal Code is amended to include any judge of a court in the county in which a jail is located, among those persons who may cause an inmate suspected of being mentally disordered to be taken to a facility for 72-hour treatment and evaluation.

As amended, Section 4011.6 does not require that the inmate be examined by a physician before being taken to such a facility.

Prior to this amendment, the person in charge of a city or county jail was required to cause an inmate to be examined by a physician, and if it was the opinion of the physician that the inmate was mentally disordered, the person in charge of the jail could send the prisoner to a facility for 72-hour treatment and evaluation.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Punishment for Crime* §908 (1963), (Supp. 1969).

Criminal Procedure; criminal records

Penal Code §§11120-11127 (new).

SB 1481 (Way); STATS 1971, Ch 1439

Allows a person to examine his records, maintained by the Bureau of Criminal Identification and Investigation; sets forth the procedure and limitations for such examination, and for correction of contended inaccuracies.

Section 11120 defines "record," to mean the master record sheet maintained under a person's name by the Bureau of Criminal Identification and Investigation—commonly known as "arrest record," "criminal record sheet," or "rap sheet." "Record" does not include any other records of the Bureau.

Section 11121 provides that it is the function and intent of this article to allow a person to examine his record and to refute any erroneous or inaccurate information contained in the record.

Section 11122 provides that a person wishing to examine his record shall obtain an application form furnished by the Bureau which form

shall require his fingerprints and such other information as the Bureau shall specify. A reasonable fee for affixing the applicant's fingerprints to the form may be charged and such fee shall be deposited in the treasury.

Section 11123 provides that the applicant shall submit the completed application directly to the Bureau accompanied by a fee from \$5 to \$10 dollars depending on the cost of processing such application. Such fees shall be appropriated to the Department of Justice.

Section 11124 provides that if the Bureau maintains a record pertaining to the applicant, it shall inform him when he may examine the record at a suitable facility of the Bureau. Upon proof of identity, the applicant shall be allowed up to one hour to examine the record but he shall not be allowed to reproduce or retain the record. The applicant may make a written summary or notes in his own handwriting.

Section 11125 provides that if an applicant is confined in the state prison or county jail, he shall make his application through the office in charge of records of the prison or jail. The bureau shall then make arrangements for the applicant to examine the record at his place of confinement.

Section 11126 provides that if the applicant wishes to challenge information contained in the record, he shall submit a written request to the Bureau on a form established by it. The request shall include a statement of the alleged inaccuracy or incompleteness in the record and shall specify any proof or corroboration available. The Bureau shall forward the request to the person or agency which furnished the information and such person or agency shall, within 30 days of receipt of the request, review its information and forward the results to the Bureau.

Section 11126(b) requires the agency and the Bureau to correct its records if they agree with the applicant's complaint. The Bureau and the agency shall then inform the applicant of the correction within 30 days.

If the agency denies the allegations made by the applicant, under the provisions of §11126(c), the matter shall be referred for administrative adjudication (in accordance with Chapter 5, commencing with §11500, of the Government Code) for a determination of whether inaccuracy or incompleteness exists in the record. If the allegations made by the applicant are found to be true, the agency (respondent) shall correct the record accordingly. The applicant shall be informed of the decision within 30 days of issuance in accordance with §11518

of the Government Code. Judicial review of the decision shall be governed by §11523 of the Government Code.

Section 11127 provides that the Bureau shall adopt all regulations necessary to carry out the provisions of this article.

Criminal Procedure; change of venue

Government Code §15202 (amended); Penal Code §§1033-1038 (new); 1431, 4700 (amended); 1033-1039.1 (repealed).

SB 787 (Grunsky); STATS 1971, Ch 1476

Chapter 1476 revises procedures with respect to transferring criminal cases from one court to another on specified grounds. It also provides that certain grounds for transfer that are applicable to superior or justice court cases are also applicable to municipal court cases. Requires Judicial Council to adopt rules of practice and procedure for change of venue in criminal actions.

When a criminal action is pending in the superior court, the court shall order a change of venue:

- 1) On a motion of the defendant, to another county when it appears that there is a reasonable likelihood that a fair and impartial trial cannot be had in the county; or
- 2) On its own motion or on a motion of any party, to an adjoining county when it appears as a result of the exhaustion of all jury panels called that it will be impossible to secure a jury to try the cause in the county.

When a criminal action is pending in a municipal or justice court, the court shall order a change of venue on the same grounds as stated with respect to the superior court, with these modifications: 1) Reference is made to the "judicial district"; and 2) when, based upon exhaustion of all jury panels in the judicial district, or in any judicial district in the county, it appears it will be impossible to secure a jury to try the cause; then the cause can be transferred to either an adjoining judicial district or to a judicial district in an adjoining county.

In a criminal action pending in a municipal or justice court, the court shall order a change of venue to another judicial district in the same county on a motion of the prosecution if it appears that the change will be for the convenience of all parties to the action and the defendant and his attorney, if any, consent in writing to the change.

If a defendant is incarcerated and the court orders a change of ve-

nue to another county, the court shall direct the sheriff to deliver the defendant forthwith to the custody of the sheriff of such other county.

Provisions are also set forth in Chapter 1476 for the cost of any such transfer of a defendant.

See Generally:

- 1) WITKIN, *CALIFORNIA CRIMINAL PROCEDURE, Jurisdiction and Venue* §§82-88 (1963).

Criminal Procedure; setting aside convictions

Penal Code §1203.4 (amended).

SB 284 (Coombs); STATS 1971, Ch 333

Under the provisions of §1203.4 of the Penal Code, a defendant, upon fulfilling certain conditions, may withdraw his plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he originally pleaded guilty and was convicted, he may have the verdict of guilty set aside.

Chapter 333 amends this section to provide that a defendant may be eligible for the relief set forth in §1203.4 if he has fulfilled the conditions of his probation for the entire period of probation, if he has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section.

Prior to the enactment of Chapter 333, a defendant was eligible for the relief provided for in §1203.4 only if he had fulfilled the conditions of his probation for the entire period of probation or if he had been discharged prior to the termination of the period of his probation. Now a defendant may be eligible for such relief if the court determines that the interests of justice would be served in granting him the relief.

See Generally:

- 1) 2 WITKIN, *CALIFORNIA CRIMES, Punishment for Crimes* §1087 (1963), (Supp. 1969).

Criminal Procedure; reporting injuries

Business and Professions Code §2391 (amended); Penal Code §11160 (amended); Health and Safety Code §11391.5 (amended).

AB 628 (Sieroty); STATS 1971, Ch 1805

Section 11160 of the Penal Code requires hospitals and pharmacies,

and designated personnel thereof, to report to specified law enforcement agencies the character and extent of any injuries treated and the name of the person with such injuries whenever those injuries are inflicted by the injured person's own act or by the act of another by means of a knife, gun, pistol or other deadly weapon, or in cases where injuries have been inflicted upon any person in violation of any penal law of the state. Chapter 1805 provides that, as used in §11160, injury does not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

Section 11391.5 is added to the Health and Safety Code to permit licensed physicians and surgeons to treat narcotics addicts for addiction (in specified facilities) when such treatment is medically proper for the rehabilitation and treatment of such addict. Under this provision a licensed physician or surgeon may administer to an addict, under his direct care, medically necessary medications and therapeutic agents, however, this authorization does not extend to the administration of any substance specified in §§11001 and 11002 of the Health and Safety Code.

Section 2391 is amended to exempt treatment of addicts as specified in §11391.5 from unprofessional conduct as defined in this section.

See Generally:

- 1) 1 WITKIN, CALIFORNIA CRIMES, *Elements of Crime* §68 (1963).
- 2) 2 WITKIN, CALIFORNIA CRIMES, *Crimes Against Public Peace and Welfare* §§731, 736 (1963).
- 3) 36 OPS. ATT'Y GEN. 200 (1960).

Criminal Procedure; probationary status

Penal Code §§1203.04, 1203(b) (amended).

AB 138 (Knox); STATS 1971, Ch 70

Section 1203(b) of the Penal Code is amended to provide that all courts shall have power to grant probation summarily in misdemeanor *and infraction* cases without referring such cases to a probation officer.

Penal Code §1203.04, as amended, provides that the clerk of the court must now submit a probation report to the arresting or investigating law enforcement agency only when a person is placed under the supervision of a probation officer, rather than in "all" probation cases as this section required prior to amendment.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Punishment for Crime* §§1050, 1062 (1962).

Criminal Procedure; bail

Penal Code heading of Article 6 (commencing with §1300) of Chapter 1, Title 10, Part 2 (amended), §1303 (new), §1272 (amended).

AB 2753 (Bagley); STATS 1971, Ch 1790

Chapter 1790 amends the heading of Article 6 (commencing with §1300) of the Penal Code to read "Exoneration", rather than "Surrender of the Defendant."

Section 1303 is added to the Penal Code to provide that if an action or proceeding against a defendant who has been admitted to bail is dismissed, the bail shall not be exonerated until 15 days have elapsed from the entry of the order of dismissal. If the defendant is re-arrested and charged with a public offense arising out of the same act or omission within the 15 day period, the bail shall be applied to the public offense. Section 1303 further provides that if bail is applied to a public offense pursuant to this section and if an undertaking of bail is on file, the clerk of the court shall promptly mail notice to the surety on the bond and the bail agent who posted the bond.

Section 1272 of the Penal Code is amended to provide that after conviction of an offense not punishable with death, a defendant who has made application for probation or who has appealed may be admitted to bail under the following provisions:

a) As a matter of right, before judgment is pronounced pending application for probation in cases of misdemeanors, or when the appeal is from a judgment imposing a fine only.

b) As a matter of right, before judgment is pronounced pending application for probation in cases of misdemeanors, or when the appeal is from a judgment imposing imprisonment in cases of misdemeanors.

c) As a matter of discretion in all other cases.

Prior to the enactment of Chapter 1790 §1272 did not apply to a defendant who had made application for probation before judgment was pronounced.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Proceedings Before Trial* §§160, 229 (1963); *Appeal* §674 (1963); 2 WITKIN, CALIFORNIA CRIMES, *Punishment for Crime* §926 (1963).
- 2) REVIEW OF SELECTED 1968 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 199.
- 3) CONTINUING EDUCATION OF THE BAR, *California Criminal Law Practice* §§18.32, 18.47, 20.28, 21.10 (1969).

Criminal Procedure; mentally retarded persons

Penal Code §1370.1 (new).

AB 2647 (Lanterman); STATS 1971, Ch. 1817

Section 1370.1 is added to the Penal Code to provide that notwithstanding the provisions of §§1370 and 1372 of the Penal Code (relating to sanity at trial), if the court has reason to believe that a defendant, as a result of mental retardation, is unable to understand the nature and purpose of the criminal proceedings against him, the trial or judgment shall be suspended. This section provides for the disposition of persons determined to be mentally retarded, and establishes procedures by which the mental status of the defendant may be ascertained. During the period of time when a defendant is being examined as to his mental condition, he may not be placed in a jail.

The section additionally provides for periodic re-evaluation of the mental condition of the defendant and prescribes procedures whereby he may be brought to trial or judgment if sufficient mental awareness is attained. The section also provides that in the event criminal charges are dismissed prior to the time the defendant is certified as able to be brought to trial, he shall be referred to the appropriate regional center for services under the Lanterman Mental Retardation Services Act.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Trial* §512 (1963).